

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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File No. 22-CR-86-2 (JWB/ECW)

United States of America,

Plaintiff,

GABRIEL LEMOINE'S  
PROPOSED VOIR DIRE

v.

Gabriel Lemoine,

Defendant.

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COMES NOW Defendant Gabriel Lemoine, by and through his undersigned attorney, and pursuant to the Second Amended Trial Order and Rule 24(a), Federal Rules of Criminal Procedure, respectfully requests that the following questions be asked of the prospective jurors in the above-entitled case during their examination.

Respectfully Submitted,

**ANDREW IRLBECK LAWYER CHTD.**

Dated: May 12, 2023

/s/ Andrew M. Irlbeck

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ATTORNEY FOR GABRIEL LEMOINE

VOIR DIRE

1. It is alleged in the Indictment that Defendants MANUEL DENIS MARTINEZ and GABRIEL EDUARDO LEMOINE possessed methamphetamine and cocaine with intent to distribute, distributed methamphetamine, and conspired with others, and aided and abetted others, in the same.

a. What have you read, seen or heard regarding these charges?

b. Do you have any personal knowledge of the alleged crimes from talking to persons named in the Indictment or anyone else claiming to have knowledge of the facts?

c. Based upon what you have read, seen or heard, have you formed an opinion as to the guilt or innocence of GABRIEL LEMOINE?

d. If so, based upon your opinion, would you find it difficult to give either the government or the Defendant a fair, objective and impartial trial?

e. Only Mr. Lemoine is on trial here. He is represented by Andrew Irlbeck. Do you know him?

f. The government is represented by Thomas Hollenhorst, Assistant United States Attorneys. Do any of you know him? Do you know any of the members of the United States Attorney's Office?

g. The attorneys inform me that the following people might be called to testify in this case. (It is requested that the Court read to the jury a list of the prospective witnesses).

h. Do you know any of the persons whom I have named?

i. What is the nature of your relationship with them?

j. Do you feel that you would find their testimony either more believable or less believable based upon your relationship with the witness?

k. Do you feel that your relationship with the witness would have any effect whatsoever on the way in which you treat the witness' testimony?

**Individual Jurors Background**

2. Where do you live?

3. How long have you lived at this address?

4. What neighborhood do you live in?

5. How serious a problem is crime in your neighborhood?

6. What are the most common type(s) of crime(s) in your area?

7. What is your profession or employment?

8. Please tell us about the place where you work and the job responsibilities you have.

9. If retired or not presently employed outside the home:

10. If you have ever been employed outside the home, what did you do?

11. Do you supervise other people?

12. How long have you had this particular job?

13. What other types of jobs have you had?

14. What do you like best and least about your work?

15. Are you married or do you live with a partner or significant other? For how

long?

16. What is your spouse's employment? For how long?

17. What is your educational background, and what kinds of training have you received?

18. Where did you go to school? What is your degree in?

19. Have you ever taken any courses in law or law enforcement?

20. Do you belong to or attend a church, temple or mosque? Which one?

21. How often do you attend services?

22. Do you have children?

23. What are their ages, and employment if any?

24. Do you belong to any organizations, such as neighborhood or social clubs, a union or professional organizations, political or church related organizations?

25. Do you do any volunteer work?

26. How active are you in this organization?

27. What kinds of activities do you participate in?

28. Have you ever held an office or served on a committee in this organization?

29. What is the purpose of this organization?

30. What kinds of spare time activities do you enjoy, such as sports or hobbies?

31. Do you have any religious or philosophical convictions which would make it difficult for you to be an absolutely fair and neutral juror in this case?

32. Did you ever serve in the military?

33. What branch? When and where? What was your rank?

34. Have you ever been a witness in any case in any court?
35. What type of case were you a witness in?
36. What court? When?
37. Who were you a witness for?
38. Have you ever been employed by a law enforcement agency?
39. How do you get your news? (i.e. from the newspapers, radio, television, internet, or other sources?)
40. Which newspapers, if any, do you read?
41. What sections of the newspaper do you usually read?
42. What television news programs do you watch?
43. What magazines do you read?
44. What television programs do you usually watch?
45. What are your favorite sources of information on the internet?
46. Have you ever been to Detroit, Mexico, or the Dominican Republic? Do you have any opinions or preconceived notions about any of those places?

**Previous Jury Service**

47. Have you ever had any jury experience before?
48. On how many juries have you served?
49. Was that in state or federal court?
50. What was that case about?
51. Were you the foreperson?

52. Were these in criminal or civil cases?

53. Was there a verdict?

54. How did your experience as a juror affect your feelings about the courts?

55. Did your experience make you at all cynical about criminal trials?

56. Was there anything about your previous jury experience that would lead you to feel that you may have some prejudices either for the prosecution or against the prosecution? Same question for the defense.

57. Have you or anyone close to you ever been involved in a lawsuit or a court case of any kind, as a witness or a plaintiff or a defendant?

58. What kind of case was it?

59. Did you/they have to go to court?

60. Did you/they testify?

61. Were you/they satisfied with the verdict?

62. How did you feel about how the legal system worked in that case?

a. How do you think that experience will influence you being a juror in this case?

b. Did you speak with the judge or anyone else involved in that case after the verdict was announced?

### **Law Enforcement and the Courts**

63. Have you or any relatives, friends, neighbors or acquaintances ever been involved in any sort of criminal offense?

a. Would that experience affect your judgment in this case in any way?

64. Have you or any relatives, friends, neighbors, or acquaintances ever been involved in police work, such as policemen, deputy sheriffs, federal agents, prosecutors and the like?

a. Is there anything about your experience, or your relationship or discussions with them which would affect your approach to this case?

b. Do you have any feelings that someone who is charged with a crime is probably guilty of that crime?

65. Would you treat the testimony of a police officer, a federal agent or other law enforcement officer as being more believable because of their occupation?

66. Have you or any friends, relatives, neighbors or acquaintances ever been either victims of a crime or charged with a crime?

a. How do you think that experience might affect your judgment in this case?

b. Would you have any problems presuming that Mr. Lemoine is not guilty?

67. Have any of you ever made a complaint to the police or brought charges against someone?

a. Please explain what happened.

b. Do you think that you are leaning towards the prosecution because of what happened in that situation?

68. Has your business or employer ever been sued? Tell us the details.

**Juror's Willingness to Follow Instructions**

69. Will you follow the Court's instructions to the jury strictly, whether you agree

with them or not?

70. Do you understand that the burden of proof is exclusively on the prosecution and that evidence must show guilt beyond a reasonable doubt or you must acquit?

a. Do you agree with that principle? What does it mean to you?

71. Do you understand that the defendant is presumed innocent and that you must find him not guilty unless the government proves that he is guilty by proof beyond a reasonable doubt?

72. Is there anyone who thinks that it is not fair for the prosecution to have to prove that a defendant is guilty beyond a reasonable doubt?

73. Would you freely vote not guilty if you were not satisfied that the evidence established guilt beyond a reasonable doubt?

74. Do you understand that in a criminal case the defendant has absolutely no obligation to produce any evidence, to prove his innocence, to testify, or to satisfy any burden of proof?

a. Do you agree with that principle of law, and will you apply it in this case exactly as I instruct you?

75. As you sit there now do you believe the two sides begin trial on equal footing? If yes, explain the presumption of innocence again.

76. Do you realize that you must reach a verdict strictly upon the evidence that is produced in the courtroom, or the lack of evidence, and you must not let any other influence whatsoever have an effect upon your deliberations?

77. Do you understand that the fact that an Indictment has been filed in this case



is no evidence whatsoever of the guilt of the accused?

78. Do you realize that an Indictment is merely a formal method of beginning legal proceedings, and no inference of guilt may be drawn from the fact of accusation?

79. Do you understand that the filing of an accusation in no way overcomes the presumption of innocence, but that presumption stays with the accused throughout the trial unless and until it is overcome by proof beyond a reasonable doubt?

80. Are you, any member of your family, or any relatives or close friends employed by or previously employees of any government agency, federal, state, county, municipal, or otherwise? This would include, but is not limited to, employment by any law enforcement agency, prosecutor's office, court, or other governmental entity.

a. If so, is there anything about your experience, or your relationship or discussions with them that would affect your approach to this case?

**Miscellaneous Legal Questions**

81. Would (any of) you prefer, for any reason, not to sit on the jury in this case?

82. Are (each of) you in such a fair and impartial state of mind that you would be satisfied to have a jury possessing your mental state judge the evidence if you or your loved ones were on trial here?

83. If you came to the conclusion that the prosecution had not proven the guilt of Mr. Lemoine beyond a reasonable doubt and you found that a majority of the other jurors believed that he was guilty, would you change your verdict because you were in the minority?

- a. How many of you would listen to the other jurors, but would stand by your own opinion if they didn't convince you they were right?

84. Do any of you believe that a defendant who does not testify must be guilty, or is more likely to be guilty than a defendant who does testify?

85. Do you understand that in a criminal case a defendant has the right to decide not to testify, not to take the witness stand, and that you will be required not to make any negative inference from that decision?

- a. Do you agree with this principle?

86. If the defense does not present any witnesses of its own, and if, instead, relies solely on the cross-examination of government witnesses to present its side of the case, would that make it more likely Mr. Lemoine was guilty?

87. Do any of you have any difficulty with the rule of law that says that any person who takes the witness stand has equal dignity with any other person who takes the witness stand?

88. If Mr. Lemoine were to testify, how many of you would give his testimony the same weight and credit that you would give to any other witness?

- a. How many of you feel that you would not give Mr. Lemoine's testimony the same weight as other people's testimony?

### **Number of Counts**

89. As you have been told, Mr. Lemoine is charged by indictment with five counts. Does the mere fact that there are five charges cause any of you to believe that

Mr. Lemoine is probably guilty of at least one of them?

**Personal Issues**

90. Is there anyone who has anything that they would like to talk to me about at the bench out of the hearing of the other jurors?

91. Is there anything else that any of you feel might affect you in being a juror in this case?

92. How many of you feel that you would be able to be a fair and impartial juror in this case?

93. Is there anyone who is at all concerned about their ability to be able to be a fair and impartial juror in this case for any reason?

**Additional Questions**

94. Does the fact that Mr. LEMOINE has been accused of crimes involving the alleged possession or distribution of illegal narcotics cause you to doubt whether or not you can be a fair and impartial juror in this case?

95. Have you ever had friends or family who were involved with drugs in anyway, including being falsely or inaccurately accused of involvement with drugs?

96. Have you or has anyone close to you had their lives affected in any way by illegal narcotics? If so, if you are comfortable doing so, please tell us about that. In light of that experience, you think that will at all impact your ability to be completely fair and impartial to both sides?

97. Do you contribute money to any law enforcement organizations?

Which ones?

98. Is any member of a political organization or fraternal organization to which you belong and with whom you are friends involved in the area of law enforcement?

99. Have you ever applied for a position with any government agency?

100. Have you ever applied for a position with any law enforcement agency?

101. Do you believe that anyone who associates with other individuals who may commit a crime must therefore also be guilty of criminal activity? Why do you feel this way?

102. You may hear testimony in this case from persons who have agreed to testify on behalf of the prosecution in exchange for not being prosecuted or for other consideration or benefits. What is your opinion on the use of such individuals and would it affect your ability to render an impartial verdict in this case?

103. I have mentioned the term prejudice several times. We recognize each of us may have certain prejudices which, despite our best efforts we cannot control. I raise that concern at this time because we want to ensure that the parties involved in this lawsuit receive a fair trial from impartial jurors, and that any of you who harbor such prejudices will be candid enough to tell us that you do not feel you should be a juror in this case. Is there anything about these matters that would cause you to begin the trial with anything less than an open mind?

104. In the same vein, have you formed any opinions about the prosecutor's

office which might sway you to favor the government in this case or to begin the case with a negative view of either side?

105. How likely is it that the government would accuse and charge an innocent person: very likely, likely, unlikely, very unlikely?

106. Do you believe innocent people can be charged with a crime?

107. You will hear that Mr. Lemoine is a lawful immigrant from the Dominican Republic. Is there anyone who feels that there is no longer any racial bias or prejudice against people of color, including lawful Dominican immigrants?

a. Please explain your feelings as to why you feel or do not feel that this is the case.

108. Please describe what contact you or people in your immediate family have had with lawful Dominican immigrants? How about immigrants in general?

a. Do any experiences stand out in your mind that have been positive?

b. Do any experiences stand out in your mind that have been negative?

109. As we have talked about, everyone has different feelings, views and biases based on their individual life experiences. We are not here to judge those views in any way. It is your duty, however, to tell us about them no matter what they are. With that said, is there anyone who believes that, to even the slightest degree, a lawful Dominican immigrant is any more likely to be involved in crime than a person of

another race?

110. Is there anyone who has an opinion on the LGBTQ community?

111. Is there anyone who has an LGBTQ family member or close friend?

112. Is there anyone who agrees with the phrase ‘marriage is between one man and one woman?’

113. This case may involve evidence of a Mexican drug cartel operating in Minnesota.

a. Does this impact your ability to serve on this jury in any way?

b. Does this impact your ability to be an impartial juror?

c. Have you ever had any interactions with Mexican drug cartels?

114. Do you have any religious or philosophical convictions which would make it difficult for you to be an absolutely fair and neutral juror in this case?

115. Will you follow the Court's instructions to the jury strictly, whether you agree with them or not?

116. Would it be personally embarrassing to you or to your spouse if you sat on a jury in this case and the jury acquitted the defendant? Would it be embarrassing to you or your spouse at work? In your neighborhood? In your family?

117. At the conclusion of the trial, you will be required to discuss your views of the evidence with your fellow jurors. Could you do that? If, after listening to the views of the other jurors you are persuaded that your views were still correct, would you be able to stand by your belief? You may be subjected to pressure from other jurors to change your position. Do you think you could withstand such pressures and

remain true to your views? Of course, if the facts and arguments of your fellow jurors were persuasive, would you be able to change your position, or do you think once you made up your mind nothing would change it?

118. Would you let outside commitments or the lateness of the hour interfere with your judgment?

119. What in your belief is the worst thing about being charged with a crime in this country?

120. Is there anything you haven't been asked about, or anything you think we should know, that might affect whether you could be a fair and impartial juror in this case?

121. Do you watch television shows that involve law enforcement or the criminal justice system? If so, which ones?

122. Do you have any legal training? If so, please describe.

123. Do you have any law enforcement training? If so, please describe.

124. Have you heard of this case before today? If so, when, and how?

125. Have you developed an opinion on the guilt or non-guilt of the defendant? If selected as a juror in this case, will you be able to set aside what you may have learned through other sources and decide the case only on the evidence presented during the trial?